

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of : Michell BRUNET

Serial No.: 10/530,022

Group Art Unit: 1612

Filed: April 1, 2005

Examiner: Qazi

For: NOVEL SUBSTITUTED ARYLHEXADIENOIC ACIDS AND ESTERS THEREOF  
WHICH CAN BE USED FOR THE TREATMENT AND PREVENTION OF DIABETES,  
DYSLIPIDAEMIA AND ATHEROSCLEROSIS, PHARMACEUTICAL COMPOSITIONS  
COMPRISING THEM AND PROCESSES FOR THE PREPARATION OF THEM

**RESPONSE TO REQUEST FOR ELECTION OF SPECIES**

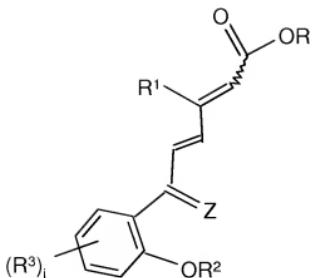
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed 29 January 2009, and the Election of species requirement set forth therein, Applicants' hereby elect with traverse, ethyl 6-(2-isobutoxy-5-methoxyphenyl)-6-oxo-3-methylhexa-2,4-dienoate, which is the second to last compound of claim 7. It is also disclosed in the specification on page 35 in Example 1 at step d. The election is made with traverse. The requirement should be withdrawn because there is no support on the record that the examination of all the claimed subject matter would create serious search/examination burden.

Applicants interpret the Office Action as being an Election of Species requirement and not a Restriction Requirement.

For the elected species the variables of formula I are as follows:



R represents a saturated aliphatic hydrocarbon-based group;

R<sup>1</sup> represents an optionally substituted saturated aliphatic hydrocarbon-based group;

R<sup>2</sup> represents an optionally halogenated saturated aliphatic hydrocarbon-based group;

R<sup>3</sup> represent a saturated aliphatic hydrocarbon-based group, which is optionally halogenated and/or optionally interrupted by one or more O atoms;

Z represents O;

and

i is 1.

Applicants note that that separation of the single species for examination involves the internal division of a number of Markush limitations within the claims. Section 803.02 of the M.P.E.P. states that should no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended. If prior art is found that anticipates or renders obvious the Markush-type claim with respect to a non-elected species, the Markush-type claim shall be rejected. Thus, should this species be allowable, expansion of the search and examination is appropriate.

No fee is believed to be due with this response, however, the Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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Attorney Docket No.: **Merck-2994**  
Date: **28 February 2009**